Todd - Speech 1856

SPEECH

OF

HON. LEMUEL TODD, OF PA.,

ON THE

RESOLUTION REPORTED BY THE COMMITTEE OF ELECTIONS IN THE CONTESTED-ELECTION CASE FROM KANSAS TERRITORY.

DELIVERED

IN THE HOUSE OF REPRESENTATIVES, MARCH 13, 1856.

WASHINGTON:
PRINTED AT THE CONGRESSIONAL GLOBE OFFICE.
1856.

KANSAS CONTESTED ELECTION.

Mr. TODD said:

Mr. SPEAKER: I feel some reluctance in prolonging this discussion, arising out of the fact, that several members from my own State have already participated in it; but the subject is one of so much importance, and occupies and absorbs so much of the attention of our people, that I feel justified in making a few observations on it.

The point most strongly insisted on, and most carefully elaborated by those who resist the adoption of the resolution submitted by the Committee of Elections, is a denial of the power of this House to inquire into and pass upon the illegality of the Kansas Legislature, and the statute under which the sitting Delegate from that Territory claims to have been elected. As I understand it, the broad proposition is affirmed, that this House is bound to recognize the validity of an act of a Territorial Legislature passed under the forms of law, irrespective and in defiance of the fact, that legislative functions were usurped in enacting such law, on the sole ground that every legislative body possesses an absolute and inherent right to settle and determine the question of its own legality; in other words, admitting that the Legislature of Kansas was imposed on the people of that Territory by non-residents—yet, because the Legislature so imposed, in perfecting the original wrong, decided that its members were legally elected, and itself a legally-constituted body, that such decision stops this House, and the people who have been wronged and outraged, from denying its pretensions. The mere enunciation of such a proposition, it seems to me, is, and ought to be, enough to show its weakness and indefensibleness. It is one which the mind intuitively rejects as inconsistent with our common sentiments of justice and right. The premises upon which the reasoning in support of it is based presuppose and take to be true the very subject-matter in dispute. The answer to the whole argument lies outside and beyond it, and consists in the fact, that there never was a Legislature in Kansas capable of doing any act having obligatory force. In order to entitle the judgment of a court to respect and authority, it must first be made to appear that it is a legal court, and justly empowered to sit in judgment on the question adjudicated. These are preliminary facts; and they must be ascertained and fixed before anything can be predicated of the force and effect of its judgment—otherwise, we would be constantly cheated by the shadows of things, and never be able to grasp their very essence and substance. The rule of law in relation to *res judicata* is founded upon the principle, that the court rendering the judgment was a competent court, and had rightful jurisdiction over the subject-matter acted on. I submit, therefore, that it is begging the question to argue and maintain that the Kansas Legislature was a legal Legislature, because it declared itself to be so. Under our system, I know of no tribunals, either legislative or judicial, resting simply on *de facto* organizations. Our Government is a government of laws—of mutual and reciprocal obligations, and recognizes no act or decision which does not proceed from a tribunal or body existing *de jure*. The rules of international law, which regulate the intercourse of separate, distinct, and independent sovereignties, control their rights, and fix their duties, have no place in the relation which subsists between this House and a Terri-

tory which can do no act except in the very mode prescribed by the law creating it, and upon strict conformity to which depends its right to have a Representative on this floor. A Territory acts within prescribed limits; it has no element of sovereignty; it exercises only a delegated authority; and all its acts must conform to the requirements of its organic law; for the moment its authorities step beyond that boundary line, their acts become usurpations, and are null and void. For I take it, the rule is well and firmly established, that all limited tribunals, created by statute, must keep strictly within the limits of the powers conferred upon them. The limitations on a Territory are as fundamental and important parts of its charter as the rights and privileges granted; and as, by the organic law of Kansas, its Legislature could be legally chosen *only* by such of the inhabitants of the Territory as possessed the qualifications demanded by the territorial law, does it not necessarily follow, as an irrefragable conclusion, that a Legislature elected by those who were not inhabitants of the Territory, and who did not possess any of the requisite qualifications of electors, was not a legal Legislature, or one authorized to exercise legislative functions; and that all its acts would partake of the fraudulent character of the source whence they emanated, and be absolutely null and void? If the Legislature of Kansas was fraudulent and illegal in its inception, it could not by any subsequent act of its own infuse right and legality into its corrupt and dead body; for, sir, there is no maxim better established, or of wider acceptation, both in law and morals, than that the wrong-doer shall not be permitted to take advantage of his own wrong.

But, sir, I affirm that this power of the House is directly deducible from the provisions of the Constitution itself. By that instrument the House is clothed with the right to determine who are its members. The exercise of that power is exclusive. It is only limited by the terms of the Constitution itself, and obviously extends to every subject of inquiry connected with a claim to membership. It is provided, that "each House shall be the judge of the elections, returns, and qualifications of its *own* members." These words are broad and comprehensive, but, at the same time, they are accurate and precise, and distinguish, by apt words, the several elements of duty imposed on the House. It is also manifest, sir, that this general grant of power was made to enable the House to preserve its integrity, and that it embraces within its scope everything necessary to accomplish that purpose. It makes the House the absolute and supreme judge of the elections of its members, and recognizes its judgment as final and conclusive, without appeal and without remedy. Neither does it prescribe the mode in which the House must render its judgment, but an unlimited discretion is given. And as each House is to judge who are its members, it is not bound to conform to any rules or formula laid down by a preceding House, but may, in its discretion, resort to whatever form of proceeding is best suited to meet the emergencies of each particular case. Therefore, the argument deduced from the premises, that this House acts judicially in determining the right of a member to his seat, and is bound to conform to the ordinary rules of practice which prevail in common-law courts, has no substance in it, because the jurisdiction of the House over the subject-matter is not derivative—its investigations are not directed and controlled by rules established by a paramount authority, but are wholly governed by self-imposed regulations, adopted *pro hac vice*, and alterable at its will. This absolute supremacy is original—a part of the fundamental law of the land—and cannot be restricted so long as the Constitution remains unchanged. Neither can it be abrogated, impaired, or trammeled by one House for a succeeding one, for the simple reason, that each House is the judge of its own case, and may, therefore, establish its own rules. In making up its judgment, the House consults its own discretion, and in its omnipotence overrides all barriers which stand in the way of its exercise.

It would seem, therefore, to follow, that analogies drawn from the practice of limited tribunals exercising a delegated authority, and amenable to superior jurisdictions, are not applicable to a body which is a law unto itself, and vested by its very constitution with absolute *dominion* over the subject.

Now, Mr. Speaker, what is the meaning of the word "election" in the clause of the Constitution referred to, and what is the duty imposed on the House by it? Is it simply to inquire into the fact whether a choice was made or not? By no means: because that word, in the connection in which it is used, necessarily imports a more extended signification—namely, that there has been a choice of a Representative made, by qualified electors, in the mode and manner prescribed by the legal authority of the State or Territory. T

Judge of the "returns" is to decide that such an election was held, and that its results were properly and truly certified; and to judge of the qualifications of a member is to determine that the person claiming the seat by virtue of such an election, so certified, is possessed of the requisite constitutional fitness. If the duties imposed on the House receive this interpretation, they find appropriate action and aptly discharge their several offices in preventing a usurpation of the rights and privileges of the House by a power extraneous to it.

It seems to me that this view is strengthened when we consider the relation which this House holds to State authorities. Members hold their seats here solely by virtue of the provisions of the Federal Constitution. They are independent of State control, and in no way subject to its jurisdiction. The authority which creates and surrounds them is paramount to State sovereignty, and exists in defiance of it. The action of a State, in derogation of the Constitution, or of the enactments made in pursuance of it, cannot embarrass the action of this House, or curtail the limits and extent of the powers conferred upon it. A State can only act in reference to the will of the Constitution by conforming to it and by assisting in giving it expression. If a State would undertake to enact a standard of fitness, in relation to members of this body, will any one contend that we could not set aside those regulations, if found to be inconsistent with the Constitution or repugnant to its requirements. The power to judge of the election presupposes the right to examine into and pass upon the legality of the law ordering and authorizing it. If this were not so, the House would be limited to the mere inquiry into the regularity of the holding of the election, and thus be robbed of the first and foremost feature of its organic law, and be subjected to inferior jurisdictions. Suppose, sir, for the sake of illustration, that a self-constituted body, or a body elected by aliens, should assume the name, style, and attributes of a State Legislature, and proceed to legislate, keeping a journal, enacting statutes, and authorizing their publication as is usual with legitimate assemblies, and that, in pursuance of a law passed by it, persons would present themselves here, with formal papers in one hand, and the journal and book of statutes of such bogus Legislature in the other; will it be contended that this House would not have the prerogative to inquire into their right to be here, and to entertain, in its fullest extent, the question of the legitimacy of such usurping Legislature and the legality of its acts. The denial of the existence of such a power is an admission that the General Government possesses no self-sustaining principle, and cannot maintain intact the true relation it holds to the several States. It robs it of all vital principle, and places its life at the sufferance of wrong-doers. The very necessity for the exercise of the power contended for, taken in connection with the explicit words of the Constitution, leaves no room to doubt as to the proper construction to be put upon it, and of the power of this House to go behind the mere machinery employed in the selection of its members, and to determine upon the character and authority of the power that fashioned and authorized that machinery and gave it vitality.

If we have the right to inquire into and pass upon the legality of State bodies and laws, there is a still stronger reason why we would possess it in relation to those of a Territory. A Territory owes its existence to Congress—it is the product of its creative power; and, indubitably, the creator may supervise the action of its creature, and compel it to conform to the law of its being. No act of a Territorial Legislature is binding unless it conforms to its organic law, and every act destitute of such conformity is null and void.

But, Mr. Speaker, we do not depend upon the deductions of general reasoning alone for the existence of this power; it is sanctioned by precedents of the highest character and most commanding obligation. These decisions can be found in the book of contested-election cases compiled from the records of Congress, to which I refer gentlemen who may be desirous of information drawn from the most authentic sources, and illustrated by the opinions of our wisest and purest statesmen. In that book cases may be found wherein the legality of State Legislatures and State laws were inquired into and passed upon, and which show that such has been the unquestioned practice from the earliest days of our Government down to the present time. I invite the attention of gentlemen on the other side of the House to the case of Potter *vs.* Robbins, and particularly to the report and speech of Silas Wright than whom no purer or abler man ever graced the Halls of Congress. It is a case bearing directly on the point involved in the one now before us; and in which the Senate not only set aside a State law, but also entertained and adjudicated

the question of the legal existence of the Legislature of Rhode Island.

Having thus shown the prerogative of the House to examine into and decide upon the legality of all laws by force of which membership in it is claimed, the question arises, has there been presented a case that calls for its exercise? I affirm there has. And here, I desire to express no opinion in reference to the actions and claims of Governor Reeder. That subject is not now legitimately before us, and it is, therefore, unnecessary to discuss it. When it does arise, I will meet it, and be governed by its merits alone, influenced either by passion or prejudice. Nevertheless, I am free to declare, that all the denunciations so freely and bitterly heaped upon the devoted head of Governor Reeder have not, in the slightest degree, lowered him in my estimation or lessened the confidence I have heretofore reposed in his honor and integrity. I now believe him to be as free from all taint of dishonor and false motives as he was when called from the peaceful pursuits of his profession in Pennsylvania, by President Pierce, to the governorship of Kansas; and that it is fully in his power to vindicate his whole conduct from the foul and degrading aspersions cast upon it by his enemies so soon as an opportunity is given to him. I am persuaded that he can and will prove, most conclusively, that all his acts, both official and unofficial, were rigidly correct, and in strict accordance with the nicest sense of duty; and that the alleged inconsistencies of his career are more seeming than real, and involve none of the elements of wrong and culpability attributed to them.

What does the case before us represent? It represents that when the people of Kansas were about to elect members to their Territorial Legislature, for the purpose of organizing their government and taking the initiative in establishing its laws and policy, they were invaded, subjugated, and overwhelmed by armed forces from Missouri, who, in military array, marched into the several election precincts, and by violence, threats, and intimidation drove away and awed into passiveness the surprised and defenseless voters; took possession of the ballot-boxes; ejected the officers legally appointed to hold and conduct the election; substituted for them pliant instruments selected from among themselves; and then went through the farce of electing minions of their own to the Legislature, many of whom were not even residents of the Territory; that the men thus lawlessly chosen by these armed marauders subsequently assembled as the Legislature, and in utter disregard of the action of the Governor, assumed and exercised the absolute power of deciding on the legality of their own elections, and then proceeded to enact, amongst others, a law for the election of a Delegate to represent the Territory in this House; that when the election took place, scenes of invasion, violence, and lawlessness similar to those which had marked the history of the previous March elections were re-enacted, and resulted in the selection of the sitting Delegate, General Whitfield; and that, ever since, there has been anarchy and confusion, riot, crime, and bloodshed throughout the Territory, perpetrated by the authority and under the sanction of these usurpers of rightful authority. Sir, if this case be true, it is one whose enormity has no parallel in our history—a case which exhibits an utter disregard for all law and order, and one that calls loudly for correction. It tells of a stab aimed at the very vitals of our Government; of the substitution of the revolver and the bowie-knife for the ballot-box; of the inauguration of the reign of ruffianism instead of the benign influences of civilization and humanity; and of the prevalence of passions and animosities which have signalized their presence by cruel outrages, torturing persecutions, and cowardly murders. And yet it is gravely argued, even if all these representations be true, that such a case is beyond investigation by this House, and that the seat of a Delegate alleged to have been sent here under the auspices of such monstrosities cannot be contested or declared vacant. It seems passing strange that any opposition should be made to an investigation into these allegations and charges by those who deny their truth. If I were a friend of the sitting Delegate, and had a tithe of the confidence professed by his supporters in the merits of his case, I would eagerly court the closest scrutiny, the largest and most extended inquiry. The denial of it, the attempt to evade and escape from it by technical subtleties and false issues, creates a larger and firmer belief in the existence of these evils, and will kindle afresh the fires that have been burning in the public heart and scaring the fraternal bonds which have united together the different sections of our common country in kindly union. Sir, the magnitude of the interests here involved, the great ends of public justice proposed to be accomplished, the vindication of the insulted law, the restoration of invaluable rights, and the peace,

quiet, and safety of the whole American people, demand that this investigation should be made—fully, promptly, and effectually made. In my judgment, there is no better mode of making it than the one proposed. The committee, clothed with the power of this House, and sustained by its authority, can effectually compel the attendance of the necessary witnesses, force the production of the needful papers, and subject to personal examination everything connected with this most unhappy controversy. An examination made in so solemn and authoritative a manner, and laid before the people, will dispel the difficulties which surround the subject, correct the evils necessarily attendant upon imperfect and doubtful information, and soothe and calm down the excitement and agitation which now pervade and distress the public mind.

The whole subject is a momentous one, and closely connected with the prosperity and perpetuity of our institutions, and should, therefore, be treated in a manner commensurate with its importance, and not be trammeled and embarrassed by sharp technicalities and trivial objections, unworthy of the subject and the responsibility of this House. Let us take hold of the question boldly and fearlessly, like men sincere in the search of the truth and right, determined to leave nothing undone that will mark our deep and lasting detestation of outrages against popular rights, and satisfy the people that here is a citadel where their liberties will find shelter, protection, and vindication. Why should investigation be stifled? Is it because gentlemen fear its results? Do they know that the Delegate from Kansas is sitting here by rights usurped, and in defiance of the wishes of the people of that Territory, and that these facts will be made clearly manifest by the proposed inquiry? If these be not their convictions, it is difficult to account for the pertinacity of their opposition, and the deep anxiety displayed in thwarting the only practical means of developing and thoroughly exposing the true history and condition of the affairs of Kansas. They should remember that truth never shrinks from the light, but, on the contrary, courts examination, and delights in opportunities wherein to display her beauty and strength. Ever disdaining to take shelter behind equivocal ramparts, or to fight with the weapons of sophistry, she trustingly stands out in the open plain, relying alone and securely upon the conquering power of her intrinsic invincibility. Gentlemen on the other side of the House owe it to themselves and to the cause of right and justice to join hands with us in sifting out the truth of this case, and in establishing, upon firm and just foundations, the quiet, order, and prosperity of the Territory of Kansas. And because I believe such results can only be attained by action guided by the light of an ample and searching inquiry into the abuses, disorders, and wrongs alleged to have existed and still prevailing in Kansas, I will cheerfully vote for the committee's resolution.